IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

CRP.No. 297 of 2005(I)

OPELE.339/1997 of ADDL.DISTRICT COURT (ADHOC)-II, ERNAKULAM
.....

REVN. PETITIONER: RESPONDENT IN OP:

THE KERALA STATE ELECTRICITY BOARD,
REP. BY ITS SECRETARY, VYDYUTHI BHAVAN,
PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.N.D.PREMACHANDRAN, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS: PETITIONER IN OP:

RAJAMMA, VAKKUPARAMBU, PETTA,
COCHIN.

BY ADV. SRI.A.RAMACHANDRAN NAIR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/11/2007, ALONG WITH CRP NO. 970 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.829 OF 2005
IN
C.R.P. NO.297 OF 2005

DISMISSED

16/11/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

C.R.P. NOs. 297 OF 2005

& 970 of 2007

= = = = = = = = = = = = = = =

Dated this the 16th day of November, 2007.

O R D E R

CRP 297/05 is preferred by the K.S.E.B. against the award passed in Ele.OP No.339/97 of the Addl. District Judge, Ernakulam and the other CRP is filed by the revision petitioner against the very same order. K.S.E.B. contend that the compensation awarded is high whereas the other revision petitioner would contend that it is low. The Court below had passed an award whereby it has directed that an additional compensation of Rs.86,103/- with 6% interest from 25.8.92 has to be paid. It is seen from the award that the Court below had relied upon the dictum laid down by this Court in ***Kumba Amma v. K.S.E.B (2000(1) KLT 542)***. By the said decision this Court has held that 5% annuity has to be calculated. It is on the basis of that decision the O.P. was disposed of.

2. The learned counsel appearing for the K.S.E.B. had drawn my attention to the decision of the Apex Court reported in ***K.S.E.B. v. Livisha (2007 (3) KLT page 1)***. In

the said decision the Apex Court had remitted back all the matters and directed the High Court to consider the matter afresh. The Apex Court held that each case has to be considered depending upon the facts and circumstances of that case taking into consideration the relevant materials, which is extracted as follows.

> "The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case."

3. In the light of the said decision it may be necessary to have additional documentary as well as oral evidence in the case. Therefore the order under challenge is set aside and the matter is remitted back to the trial court with a direction to permit both the parties to adduce documentary as well as oral evidence in support of their respective contentions and dispose of the matter in accordance with the principles enunciated in the decision of the Apex Court in ***2007 (3) KLT page 1.*** The parties are directed to appear before the Court below on 19.12.07.

The C.R.Ps. are disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-